

Working towards the promotion of positive forms of discipline and the abolition of corporal punishment to ensure the realisation of children's rights to dignity and physical integrity.

# article 19

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## 16 Days of Activism on violence against women and children

*Article 19* conducted an interview with Deputy Minister Cheryl Gillwald on this campaign aimed at eradicating violence against women and children.

**Question: Can you give us some background on the 16 Days of Activism event?**

For the past ten years the 16 Days of Activism campaign has marked activities around the world to end gender violence. It has been used to create a global movement to raise awareness, to address policy and legal issues, to campaign for the protection of survivors of violence and to call for the elimination of all forms of gender violence.

The day that marks the start of the campaign, 25 November, was declared International Day Against Violence Against Women at the first Feminist Encuentro for Latin America and the Caribbean held in Bogota, Colombia in 1981. This day was chosen to commemorate the death of the Mirabal sisters in 1960 under the dictatorship of Rafael Trujillo in the Dominican Republic. The day was officially recognised by the United Nations in 1999 as the International Day for the Elimination of Violence Against Women. Following this, the international community identified 10 December as International Human Rights Day, and gender activists at the time lobbied for and gained this space as a dedicated platform to deal with the issues of gender-based violence. The UN has subsequently endorsed this 16-day campaign.

The 25th of November highlights the intersection between violence

and inequality and recognises that the levels of violence directed at women speak symptomatically of their low status and marginalisation. International Human Rights day on 10 December and the commemoration of this important anniversary within the 16 Days of Activism send the very strong message that women's rights are human rights. In South Africa we use the 16 Days of Activism to highlight the issues of abuse directed at children as well. The direct extrapolation of this is, of course, that children's rights are human rights.

The South African campaign attempts to expose and sensitise the public to the significant inequality suffered by women and children, as characterised by the systemic use of violence against them. It is significant that this period should be used to build a critical mass of people in society who share the same values, who believe in the universal nature of the human rights of all citizens and those who can think intelligently about stopping violence in our society. The campaign is based on a salient observation by Edmund Burke - all that is required for evil to triumph is for good men to stand by and do nothing!

The 16 Days of Activism campaign embraces the notion that all forms of violence against women and children in South Africa are unacceptable and should be eradicated. To show our support for this initiative, we include an interview with Deputy Minister of Correctional Services, Cheryl Gillwald, on the history of the campaign and its relevance to the issue of abuse against children.

In our final edition for 2005, we look at key issues in disciplining children in schools, following our tips on positive discipline in the home in our last edition. One of the purposes of Article 19 is to raise general awareness on the harmful effects of corporal punishment in all areas, not just the home. Although corporal punishment has been prohibited in schools, the challenge of equipping educators with the means to effect positive forms of discipline remains. Article 19 will continue to address this in future editions.

Subsequent to our inclusion of an article on the experiences of a Swazi head teacher, we feature the experiences of an educator from Athlone in Cape Town, who discusses the challenges she and her colleagues face, while nevertheless supporting the view that physical punishment is not in compliance with children's rights.

In addition, Article 19 continues to feature developments in other areas of Africa. We examine the legal status of corporal punishment in Zambia as well as recent moves to prohibit physical punishment in certain aspects of public life. Likewise, we provide an overview on the countries that have actually effected a total prohibition of all forms of corporal punishment.

Continuing from the last edition, we also feature more myths about corporal punishment and illustrate how these so-called justifications are not credible and can be countered.

Finally, we wish to remind all our readers that the holiday season is near and that it is at this time of the year that children are at risk of various forms of abuse due to being home sometimes without adult supervision, over-indulgence in alcohol and drugs by adults, and the fact that sometimes families are placed under great stress on account of the inability to meet the emotional and material expectations of children. It is therefore a time that child rights activists should intensify their efforts to ensure the protection of children.

We wish all our readers a happy and safe holiday season.



**25 November - 10 December**

**Question: Does the 16 Days of Activism campaign have any impact on steps towards the prohibition of all forms of corporal punishment upon children in our country?**

Parental corporal punishment has not really been a focus of the campaign so far, but this is something that is obviously important and we would welcome partnerships with civil society on this issue. The campaign would be an ideal mechanism for such working relationships to be forged. In my personal view, if we are talking about no abuse being acceptable, then arguing in favour of parents' rights to reasonable chastisement is a contradiction in terms. I have much sympathy with parents who consider themselves capable of reasonable physical chastisement of their children, but a value of no violence is simply that - it is universally applicable and it is the "degrees of reasonableness" that particularly concerns me. Resorting to physical forms of punishment, I believe, inevitably involves a sacrifice of personal dignity - both to the inflictor and to the receiver of these unwelcome attentions.

**Question: What are your views on the fact that parents have a common law right to reasonably chastise their children, which may include physical punishment?**

Ours is a values-based campaign; one can't have one value in one context and then abandon this value in another. Safety begins in the home - women and children need to feel safe in their homes and schools, I believe that physical punishment of children is an abuse of power - an act of domination. At the same time, though, we have to provide parents with positive and constructive alternative ways of intervening, and place the emphasis on positive values and on alternative and effective mechanisms for punishment and chastisement. Having said that, as a parent one is often not sure which alternatives would be sound, effective or respectful of individual dignity.

If (as lobbyists) we condemn certain paths of action, we need to provide cogent arguments for their condemnation and present credible alternatives that offer the prospect of positive and affirming family relationships that work for both the parent and the child. Condemnation in absolute, abstract and even academic or cerebral terms tends to alienate or confuse the average parent (like me) or child - alternative solutions to discipline must make sense and must be practical. ●

# Key issues

## in promoting positive discipline in schools

The Save the Children Alliance's manual entitled *Ending Physical and Humiliating Punishment of Children* addresses important messages that educators need to consider when faced with matters of discipline.

It is important to take a positive approach to creating change rather than emphasising what teachers are doing wrong. Teachers are better able to stop using physical punishment and other humiliating forms of discipline if they feel there are effective, alternative ways of encouraging appropriate pupil behaviour. In all education and training, therefore, you might focus on the following issues:

- **Children's motivation:** The overwhelming majority of children want to learn and are capable of good behaviour. Teachers can work effectively with students if they adopt a positive approach, avoiding anger on the one hand and ineffective pleading on the other.
- **Rewards, not punishments:** Good behaviour depends on establishing a clear framework of rules, boundaries, routines, rewards for good behaviour and corrective sanctions. Young people are more likely to behave in an orderly fashion if the expectations concerning their behaviour are made clear.
- **Shared rule-making:** Involving children in making the school rules is shown to significantly reduce disciplinary problems. Rules are far more effective if teachers and students work together to agree on them.
- **Respecting rights as a reciprocal process:** If children feel that their rights are respected, it is easier for them to understand the importance of respecting other people's rights.
- **Adult behaviour:** The behaviour of the teacher is the most important determining factor in student behaviour. If teachers act aggressively or ineffectually, students will not respond in a constructive way.
- **Winning co-operation and reducing teacher stress:** Instead of

going straight for a punishment, teachers should explain the rule, urge compliance, and remind the student of their choice in the matter. To minimise teacher stress and avoid a continuing battle with the student, it is important to blame the behaviour rather than the child, keep any anger brief, perhaps get away from the student for a while, and rebuild the relationship as soon as possible.

- **A planned, whole-school approach:** All of the above is much easier if everyone concerned with the good running of a school works together. Teachers will have a more consistent approach if there is collective agreement on how to teach and manage behaviour.
- **Curriculum matters:** A curriculum that is stimulating, challenging and involves students will encourage them to behave well and learn more effectively.
- **Promoting equity and respect:** Where differences between different groups are acknowledged and valued, and the damaging impact of discrimination and prejudice is realised, there is less likely to be violence and bullying either by teachers or children towards each other.
- **Children as a resource:** Children can play a valuable role as mediators, peer counsellors and peer educators to address conflict between children in the school. In this way, they contribute their skills toward the creation of a violence-free environment, and relieve pressure from teachers. ●

Extract from Harper K, Horno P, Lansdown G, Martin F, Newell P, Nilsson M, *Ending Physical and Humiliating Punishment of Children: Manual for Action*, Save the Children, 2005 – used with kind permission of Save the Children, Sweden.

# Zambia:

## taking firm steps against corporal punishment

The overarching legal instrument in providing for children's rights is the United Nations Convention on the Rights of the Child (CRC). Of particular significance to the issue of corporal punishment is article 19(1) which the Committee on the Rights of the Child has interpreted to call for a complete prohibition of all forms of corporal punishment of children. Similarly, on a regional level, the African Charter on the Rights and Welfare of the Child also contains a provision that relates to the protection of children against child abuse, torture and inhuman and degrading treatment. This provision of the Charter is similar to article 19(1) of the CRC and hence is of significance to the issue of protecting children against corporal punishment.

In Zambia steps have been taken towards abolishing the use of corporal punishment on children in most areas of public life. It appears that the decision passed by the High Court in 1999 in the case of *John Banda v The People*<sup>1</sup> encouraged law reform on the issue of corporal punishment. This led to various provisions in different pieces of legislation being reviewed and repealed.

The *Banda* case concerned an appeal by the appellant against a sentence handed down by the magistrate's court. The magistrate's court had ordered that the appellant be given ten strokes with a cane after being convicted for malicious damage to property. It was against this sentence that an appeal was lodged in the High Court. The appellant

argued that the court should declare this sentence null and void on the ground of unconstitutionality in that it, by reason of its brutal and barbaric nature, conflicted with the appellant's right against torture, inhuman and degrading punishment under Article 15 of the Zambian Constitution<sup>2</sup>. The appellant further argued that the court should declare the relevant sections in the Penal Code<sup>3</sup>, which provided for the imposition of corporal punishment as a sentence, as unconstitutional and that these sections should be repealed.

The court found that the sections providing for the use of corporal punishment as a sentence were in direct conflict with article 15 of the Zambian Constitution and thus declared them unconstitutional and ordered that they should be repealed from the Penal Code.

Following this decision, steps were taken towards amending and repealing various sections in different pieces of legislation that allowed for the use of corporal punishment in public life.

### Judicial corporal punishment

The provisions relating to corporal punishment in the Penal Code were amended by the Penal Code Amendment Act (10 of 2003). These amendments included the repeal of section 24(c) of the Penal Code which allowed for the imposition of corporal punishment as a sentence by the court, and also the repeal of section 27 which specified the circumstances and the manner in which the corporal punishment should be carried out. Section 36(c), which allowed the court to impose a sentence of corporal punishment in addition to any other punishment inflicted by the court, was also repealed.

<sup>1</sup> *John Banda v The People* HP A/6/1998.

<sup>2</sup> Article 15 of the Constitution of the Republic of Zambia of 1991 (as amended by Act 18 of 1996) provides that "a person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment".

<sup>3</sup> These were sections 24(c) and 27 of the Penal Code, Chapter 87 of the Laws of Zambia. Section 24(c) allowed for corporal punishment as a punishment to be inflicted by a court and section 27 stipulated the instances where corporal punishment could be administered.

### Corporal punishment in schools

The use of corporal punishment in schools has also been abolished. Section 12 of the Education Act (Chapter 134 of the Laws of Zambia) was amended by the Education Amendment Act (11 of 2003) to prohibit the use of corporal punishment in schools. Section 12(1) (c) of the Education Act provided that “the Minister may, by statutory instrument, make regulations regulating the administration of corporal punishment to pupils at government and aided schools and hostels”. The Education Amendment Act amended this section by deleting it from the Education Act. It should however be noted that while sections which previously allowed for the use of corporal punishment have been repealed, it appears that there is no express provision actually stating the prohibition.

### Corporal punishment in prisons

The Prisons Amendment Act (16 of 2004) amended and repealed various sections in the Prisons Act (Chapter 97 of the Laws of Zambia) relating to the use of corporal punishment. These included the deletion of parts of section 33 of the Prisons Act which allowed for a prison official or any other person to be liable for a sentence of corporal punishment upon being found guilty of mutiny or sedition among prison officers or prisoners.

### Corporal punishment of children within the family

In terms of customary law and cultural beliefs, parents have the right to bring up their children as they see fit. This includes the right to chastise their child, which can include the imposition of physical punishment provided that such physical punishment does not result in injury or inflict harm to the child. With regard to situations when the parent is the accused, parents may defend themselves by saying they were merely disciplining their child and were asserting their cultural beliefs that they could bring up their children as they saw fit.

In light of the above, the physical punishment of children currently does exist within the home and family. Only when such punishment is excessive or amounts to abuse, is a parent liable to be convicted of a criminal offence.

What is beneficial for law reform in Zambia is that Zambia has ratified the CRC and has signed the African Charter on the Rights and Welfare of the Child. Further, article 15 of the Constitution of Zambia 1991 provides that “no person shall be subjected to torture or to inhuman or degrading punishment or other like treatment”. It was the emphasis on this clause in the *Banda* decision that ruled corporal punishment to be unconstitutional. This provision can also be used to advocate for a complete prohibition of all forms of corporal punishment and inhuman or degrading punishment of children in Zambia. ●

Extract from *Report on the Legal Status of Corporal Punishment and Other Forms of Humiliating or Degrading Punishment of Children in South Africa, Swaziland and Zambia*, Community Law Centre, 2005, commissioned by Save the Children, Sweden (South Africa).

*My mother came and hit me with a fist hard and I didn't cry. Sometimes she cries because she thinks she will kill me. One day she hit me with ladies heel shoes on my hips.*

(Girl, 9-12, urban, Limpopo)

*We were all sitting with my sisters, brothers and cousins. He asked how am I talking to him and he hit me. He hit me with a pipe that has wires inside. He hit all over the body.*

(Girl, 13-18, rural, KZN)

*At home they had cooked Ujeqe (steamed mealie bread) and my aunt had gone to the fields. She asked me to mind the bread and the bread burnt. My aunt was so angry with me. My aunt asked me to get a stick from a tree and she hit me with it.*

(Girl, 13-18, rural, KZN)

*She took out a belt in front of my brother and she started beating me up. She made me go to my friend's house. I was scared and I went there crying. When I got to her gate I wiped my tears and my eyes were still red and I was embarrassed that my friend could see me, that I was beaten at home.*

(Girl, 9-12, urban, Limpopo).

*I went to show her my work and she beats with a pipe and she said I told you to stop writing wrong stuff.*

(Boy, 6-8, urban, Gauteng)

These quotes are sourced from a qualitative survey commissioned by Save the Children Sweden, South Africa that was undertaken by Glynis Clacherty, David Donald and Alistair Clacherty in December 2004

# The effects of physical and humiliating punishment on children

The International Save the Children Alliance's manual entitled *Ending Physical and Humiliating Punishment of Children* highlights the effects of physical and humiliating punishment on children.

## Physical consequences

The consequences of physical punishment can range from physical pain, minor cuts and bruises to serious injuries resulting in chronic physical disability. Accumulated research supports the theory that physical and humiliating punishment is an ineffective discipline strategy for children of all ages and, furthermore, that it is often dangerous. One of the concerns is that the effectiveness of punishment decreases with use, so its severity must be systematically increased. As they become desensitised to what they are doing and frustrated by the diminishing returns, parents, teachers and other caregivers may move from light slaps to hard blows. As a result, children may suffer injuries that need medical attention, leave permanent damage, and even cause their death.

## Psycho-social consequences

Although the physical consequences are more immediate and obvious, it is the longer-term psycho-social aspects which give rise to most concern. No matter what their age, children's developing minds are damaged by violent treatment. There is a relationship between physical and humiliating punishment and depression, low self-esteem, negative psychological adjustment and poor relationships with parents. The following list provides an indication of some of the better understood psycho-social effects of physical and/or humiliating punishment on children.

- It lowers children's self-esteem, teaching them poor self-control and promoting negative expectations of themselves.
- It interferes with the learning process and with their cognitive, sensory and emotional development. Research indicates that children who are physically and humiliatingly punished perform poorly on school tasks compared to other children (Straus, 1999). Children frequently cite physical and humiliating

punishment as a reason for dropping out of school, alongside factors such as poverty and gender discrimination.

- It discourages the use of reasoning. By precluding dialogue and reflection, it hampers the capacity to understand the relationship between behaviour and its consequences.
- It makes children feel lonely, sad and abandoned, diminishing their confidence in society as a protective environment. It promotes a negative view of other people and of society as a threatening place.
- It creates barriers that impede parent-child communication and damages the emotional links established between them. Physical and humiliating punishment erodes the trust between a parent and a child and increases the risk of child abuse (Alyahri, 2004).
- It teaches children to link love with violence. The very people who are supposed to love them are also hurting them, and this can generate an assumption that violence is both possible and normal in a loving relationship.
- It can stimulate anger and for some a desire to run away from home.
- The strongest, usually unintended, message that physical and humiliating punishment sends to the mind of the child is that violence is acceptable behaviour, and that it is alright for a stronger person to use force to coerce a weaker one.
- Violence begets violence. It teaches violence and revenge as solutions to problems, and it perpetuates itself, as children imitate what they see adults doing. Childhood victimisation of boys and girls is predictive of later antisocial personality disorder, criminality and violence. Children who are exposed to high levels of violence while they are growing up are more likely to use violence to solve problems when they are older (Porteus *et al*, 2001). Physical and humiliating punishment most often produces in its victims anger, resentment and low self-esteem.
- Children who have been subjected to punishment may manifest difficulties with social integration.
- It does not teach children to co-operate with authority; it teaches them to comply with the rules or to infringe them. ●

Extract from Harper K, Horno P, Lansdown G, Martin F, Newell P, Nilsson M, *Ending Physical and Humiliating Punishment of Children: Manual for Action*, Save the Children, 2005 - used with kind permission of Save the Children, Sweden.

# An educator's view....

Subsequent to the article from Nomsa Dlamini, a head teacher in Swaziland, on her experiences and thoughts on corporal punishment, Lucinda le Roux writes as follows:

**A**s a grade 10 and 12 educator at a high school in Athlone, Cape Town for the past year, I am all too aware of the disciplinary problems faced by my own school as well as other schools, particularly public schools in the broader Western Cape. In my opinion there are a number of reasons for the increased disciplinary problems at public schools. One of the main contributing factors is that teachers were not equipped with alternative methods to corporal punishment, even after 1996 when corporal punishment in schools was abolished. Teachers were left to their own devices and there was no support from the government in this regard.

Discipline problems experienced at my school include the smoking of dagga, smoking, large-scale truancy from classes and the use of vulgar and foul language directed at teachers and used amongst learners. I am in no way blaming the banning of corporal punishment for the increase in misbehaviour at school; in fact I, vehemently oppose the use of corporal punishment on children.

At my school methods such as detention, keeping children in at breaks to complete work, suspension, as well as calling parents in to discuss discipline have failed dismally. With regard to detention, children use the (justifiable) excuse that they cannot remain after school as they get robbed of their possessions if they walk home alone or that they do not want to get into taxis alone without their friends. With regard to suspension, many learners have indicated that they want to be sus-

pending as they can then "legally" be absent from school.

The government should play a more pro-active role in trying to organise information sessions with teachers and principals on alternative forms of discipline. Unfortunately, only minimal and sporadic training on alternatives to corporal punishment has been provided.

It is my opinion that some steps to combat this problem should include comprehensive training initiatives for all educators as well as a national campaign by the government to address learners and educators on their rights and responsibilities in a manner that will deal with the right to dignity and mutual respect. Teachers also need to educate themselves about alternatives to corporal punishment and should praise children for work done well or reward them for outstanding academic and sporting achievements, which is a way to motivate children and encourage positive behaviour.

Finally, I would also submit that parents need to take responsibility for their children's conduct, as parenting is not the primary purpose of educators. However, there does need to be a synthesis between the guidance given in the home and at school. That is why both parents and educators need to be involved with an individual child's development. ●

## 15th International Safe Communities Conference

The Child Accident Prevention Foundation of Southern Africa takes pleasure in inviting delegates and presenters to the 15th International Safe Communities Conference. The conference will be held from 9 - 11 April 2006 at the Kramer Law Building, Middle Campus, University of Cape Town.

It is envisaged that a local Safe Communities Network will be established during the conference and that several South African communities will become partners of the International Safety Communities Network.

The scientific programme will comprise of oral and poster sessions, keynote lectures and site visits/inspections.

The conference will address the following themes:

**Theme 1** Towards safe and healthy communities (urban and rural)

**Theme 2** Towards safe and healthy schools

**Theme 3** Towards safety in the home

Registration, accommodation, tour bookings and the programme will follow this announcement. Should you wish to be added to the conference mailing list, please forward your details to Marta Collins.

For further information, contact Marta at [mcollin@curie.uct.ac.za](mailto:mcollin@curie.uct.ac.za).

# The role of Public Administration in implementing a ban on the physical punishment of children in South African schools

*by Ntswake Senosi of the Education Policy Unit at the University of the Witwatersrand*

## Background

This study was meant to commence during the last quarter of 2004. However, interviews in schools were conducted in 2005 as the Department of Education does not allow any research to be conducted in schools during the last quarter of the year. Three provinces, namely, Gauteng (GP), the Eastern Cape (EC) and the Northern Cape (NC) were selected as sites to be researched in this study. There were two reasons for this selection. Firstly, time and financial constraints did not allow coverage of all nine provinces. Secondly, there was no prior evidence to suggest that the incidence of corporal punishment is more pronounced in some provinces than others. The selection of these three provinces rather than others was based on the understanding that some provinces are ahead of others in policy implementation, and that the sample should reflect this.

The research instruments were developed and piloted in October 2004.

We came to an agreement with Save the Children, Sweden that we would continue the interviews at schools and provincial officials in the next year. In January 2005, letters were sent to the three Provincial Departments of Education requesting permission to visit the schools.

## Methodology

Interviews were conducted with key education officials responsible for the implementation (enforcement, monitoring and evaluation) in all three provinces. With the assistance of the provincial officials, two district level officials were selected in each of the three provinces. The district officials assisted in the identification of the schools in their districts. Two schools were selected in each district.

In each school, interviews were conducted with two educators and a focus group of four learners - two boys and two girls. An exception was a school in Ekurhuleni East District where we interviewed five learners. In addition, principals were interviewed in three of the schools, one in the Eastern Cape and two in the Northern Cape, making three educators in each of these schools. The selection of learners and educators in all schools was based on representative gender and population groupings as far as possible. In racially mixed schools, we tried to balance the composition of learner groups by 'race'. The same applied to educators, although this did not prove possible in all cases. Educators of both genders were interviewed only at two schools, both in the Eastern Cape. At the other four schools interviews were conducted with either female or male educators, either because the school's staff was female-dominated (School in Ekurhuleni East District, Gauteng) or because appropriate educators were not free at the time of the visit.

Representatives of relevant NGOs and other interested organisations were also interviewed. Those NGOs included Concerned Learners' Committee and the Bophelong Learner Representative Forum, the Community Law Centre, RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect) and the Education Rights Project (ERP). Relevant documents were also scrutinised.

## Outputs

The output of this study was a research report submitted to Save the Children, Sweden. The researcher involved in this study also participated in the discussion on corporal punishment in schools on SAFM's programme, Afternoon Talk, on 31 April 2005. The study also assisted in providing information to the Education Rights Project's booklet on corporal punishment. The findings of this report confirmed the perception that the policy banning corporal punishment had not managed to eliminate the practice of corporal punishment in South African schools. However, the study concludes that, while the practice was still widespread in schools, and the role of public administration in



the implementation of the ban face barriers, there were some positive indications. These include: the support for the policy expressed by the majority of officials; reported incidents of growing community involvement; and the small but apparently growing number of educators particularly at primary school level who are keen to implement alternatives to corporal punishment. Learners also showed awareness of the policy and of their rights within the law.

### Recommendations

The report recommends:

- a greater harmonisation of practices of implementation, monitoring and evaluation between Provinces involving better communication between National and Provincial officials;
- a generous and consistent deployment of resources for the educa-

tion and support of all stakeholders in the implementation of alternative systems of discipline;

- support for the development of a Continuing Professional Development system as recommended by the recent National Framework for Teacher Education Report to provide in-service training and support for teachers in all aspects of education policy, including the ban on corporal punishment;
- support for the establishment and ongoing development of broadly based Community Education Forums; and
- the employment of better systems of financial management, budgeting and, ideally, alternative national systems of finance. ●

# Common arguments “justifying” corporal punishment

People often use various arguments to justify the use of corporal punishment of children. The following are two such examples taken from *Corporal Punishment and Bullying: The Rights of Learners*, a publication of the Education Rights Project of the Wits Education Policy Unit, written by Salim Vally.

**“Schools need corporal punishment as a last resort against difficult children – a deterrent to discourage bad behaviour and encourage good work”.**

This view claims that while corporal punishment may not be good for “normal” children, it is a necessary strategy for “difficult children”. The problem with this argument is that the very children who make you “tear your hair out” are the ones who show the worse long-term impact from corporal punishment. Quite often these children’s disruptive behaviour is a sign of other serious problems, perhaps at home. While corporal punishment is seen as a “quick fix” it does not get to the root of the problem and does not solve it for all time. It does not work as a deterrent – most often the same children are beaten for the same offences over and over again. Some learners even boast about it- wearing it as a band of courage among their peers. Learners focus on the beating and not the reasons behind the beating. Educators who are committed to run classrooms with non-violent and child centered approached to classroom discipline have the fewest problems over time.

**“Corporal punishment is a minor issue compared to issues of survival and many fundamental rights of children that are violated all the time”**

In our country where millions of children suffer for lack of enough food, shelter, medical care and education, even those most concerned with children’s rights may argue that corporal punishment is a relatively minor problem that should wait for later to be sorted out. The point is that the ending of corporal punishment should be struggled for together with the struggle to achieve equally important rights. Just as challenging violence against women has been a central part of their struggle for equality, so it is with children. Challenging corporal punishment is important to improving their position as people and asserting their rights to participation as well as protection. ●

# Prohibition of corporal punishment

## An international overview

**M**any might be of the opinion that corporal punishment by parents for the purpose of discipline and correction is acceptable. However, it is significant that there is an international move towards abolishing all forms of corporal punishment of children including that which is imposed in the home or by parents\*. This area of law reform dates as far back as 1979 when Sweden took the lead on this issue and was the first country to abolish all forms of corporal punishment. To date 17 countries have abolished all forms of corporal punishment of children including the imposition of corporal punishment in the home or by parents. These countries are Austria, Croatia, Cyprus, Denmark, Finland, Latvia, Norway, Germany, Italy, Israel, Sweden, Iceland, Ukraine, Bulgaria, Hungary, Belgium and Romania.

It should be noted that various strategies and steps were used to bring about this change in these countries. Some initiated change by firstly abolishing corporal punishment in the public sphere. With regard to corporal punishment in the home, a first step included removing the defence of reasonable chastisement which was available to the parents. This was then followed by a more explicit prohibition being included in civil legislation.

However, it is reported that merely removing the defence of reasonable chastisement (which indirectly has the effect of abolishing corporal punishment in the home) without also simultaneously explicitly prohibiting corporal punishment leads to much confusion amongst professionals, and the public and parents still believing that physical punishment was legal. Therefore, in order bring about real and constructive change, it would be necessary to have an explicit provision stating that corporal punishment in the home is not allowed.

In other countries such as Italy and Israel, corporal punishment in the home was abolished by court decisions when cases involving parental violence against children were brought before the courts.

What follows is a brief summary of how some of these countries have gone about effecting the ban on all forms of corporal punishment.

### Croatia

An explicit prohibition of corporal punishment is found in the Family Act of 1998 that came into effect on 1 January 1999. The specific provision provides that "parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse". Further provisions include that a parent is obliged to protect the child from degrading treatment and physical punishment administered by others, that every citizen is obliged to inform a social welfare centre about any infringement of children's rights, especially forms of violence, and prohibits the use of violence by an adult against a spouse or another family member. Provision is also made for children to approach competent bodies if they believe their rights have been infringed in order to have their case examined and appropriate measures taken.

### Cyprus

In 1994, the Republic of Cyprus banned the physical punishment of children with legislation that addresses the whole spectrum of family violence. The Violence in the Family (Prevention and Protection of Victims) Law of 1994 provides that "any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family [is prohibited]". This Act also recommends the establishment of an Advisory Committee on family violence; provides for the appointment of family counsellors to offer support and guidance; empowers the court to issue contact orders and removal of a child at risk of harm in a household, and provides for the establishment of shelters for victims of abuse. This piece of legislation made any violence in the context of the family illegal and included sanctions relating to the psychological damage caused by witnessing violence in the family as it also provides that it is an offence for violence to occur in the presence of a child.

### Denmark

In Denmark, the Parental Custody and Care Act of 1997 explicitly prohibits the corporal punishment of children. It provides that "the child has the right to care and security. It shall be treated with respect for its personality and may not be subjected to corporal punishment or any other offensive treatment." This provision is regarded by all as a complete prohibition of physical punishment. However, there were

\* Rowan Boyson (ed Lucy Thorpe) *Equal protection for children- an overview of the experience of countries that accord children full legal protection from physical punishment* NSPCC. Report accessed from [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org) Also see *States with full abolition* accessed from [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org) on 4 October 2003. Most of the information contained in this article is sourced from this report.

various stages of law reform that preceded this abolishment. These included the abolishment of men's rights to beat their wives and servants in 1920; ending corporal punishment of prisoners in 1922; ending corporal punishment in schools in 1967 and a provision written into the Custody and Care Act in 1985 stating that parents had a duty to protect children against physical and psychological violence.

## Finland

An explicit prohibition of the physical punishment of children is found in the Child Custody and Rights of Access Act of 1983. This piece of legislation forms part of family law and provides that "a child shall be brought up in a spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. The growth of a child towards independence, responsibility and adulthood shall be supported and encouraged". If parents violate the ban in any way that would constitute a criminal offence if committed against an adult, they are liable for prosecution for assault under the Criminal Code. There were various stages of law reform that preceded this ban. These included the abolishment of corporal punishment in schools in 1914; the removal of the defence of 'lawful chastisement' from the Criminal Code in 1969 and the Child Welfare Act of 1983 which radically overhauled the law dating from 1937 and emphasised primary prevention and non-institutional social care.

## Germany

An explicit prohibition of physical punishment in the context of children's rights was introduced through an amendment to the civil law in 2000. The relevant provision provides that "children have a right to be brought up without the use of force. Physical punishment, the causing of psychological harm and other degrading measures are forbidden". Stages of law reform which preceded this amendment in 2000 included legislation against the right of men to beat their wives and servants; legislation prohibiting the use of corporal punishment in schools and residential care in the 1970s; a ban on degrading methods of child-rearing in 1980 and a ban on degrading methods of discipline including physical and psychological abuse in 1998.

## Italy

In May 1996, the Supreme Court (The Court of Cassation) declared that parental use of physical punishment to educate or 'correct' their children was illegal. In this instance, a father was prosecuted for often using violence against his 10 year old daughter. The father claimed, in his defence, that he was not guilty of maltreatment since he had only intended to correct his child's behaviour. The Judge rejected this defence and stated that, on the basis of the Italian Constitution, statutes on maltreatment and international law, parents are forbidden to use any violence in the upbringing of their children. He stated that the "use of violence for educational purposes can no longer be considered lawful".

## Israel

In January 2000, the Israeli Supreme Court effectively banned all parental corporal punishment in the landmark judgment of *Natalie*

*Bako vs The State*. In this matter, the appellant (a mother) was convicted and sentenced for the abuse and assault of a minor. She appealed to the Supreme Court against both convictions arguing that she had used acceptable disciplinary measures ('reasonable chastisement') against her children. The Court held that the appellant's defence that the acts were done for the good of her children contradicted the fundamental values of society regarding human dignity and the integrity of the body and mind of the minor. The Court also stated that "[physical punishment] injures [the child's] body, feelings, dignity and proper development. Such punishment distances us from our goal of a society free of violence. Accordingly, let it be known that in our society, parents are now forbidden to make use of corporal punishment or methods that demean and humiliate the child as an educational system". Following this judgment, the defence of 'reasonable chastisement' was removed from Israeli legislation.

## Sweden

Sweden was the first country to enact an explicit ban on the physical punishment of children as early as 1979. In 1979 a provision was added to the new Children and Parents' Code which read: "the parent or guardian shall exercise necessary supervision in accordance with the child's age and other circumstances. The child may not be subjected to physical punishment or any other injurious or humiliating treatment". In 1983 the Children and Parents' Code was extended to include a more positive statement of children's rights and the relevant provision now reads: "Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment". Prior to this, there were various stages of law reform which included the establishment of the Children and Parents' Code in 1949; the removal of the legal defence for physical punishment of children from the Penal Code in 1957 (however, this defence was retained in the civil code); the banning of corporal punishment in all schools and childcare settings in 1962, and the removal of a provision in the civil code allowing 'petty reprimands' in 1966 (the result being that smacking now effectively constituted assault).

## Conclusion

If one considers how widely the Convention on the Rights of the Child has been ratified, it is surprising and a matter of concern that only a handful of countries has actually prohibited corporal punishment by parents. Noteworthy, none of the countries listed above are African and it is perhaps high time that a country from our continent joined this distinguished list. ●

## Baba: Men and Fatherhood in South Africa

Edited by Linda Richter & Robert Morrell

In *Baba: Men and Fatherhood in South Africa* authors examine certain conceptual and theoretical questions regarding fatherhood and attempt to map this field. In the second section of the book, fathers and fatherhood are examined from a historical perspective, showing how race and class have shaped fatherhood in South Africa, and how understandings of fatherhood have changed over time. In the third section, authors discuss the way in which fathers appear in the media, how men as fathers are often ignored or portrayed in narrow ways which inhibit alternative forms of fatherhood emerging. In the fourth section, authors offer answers to how men experience fatherhood and what obstacles bar them from expanding their engagement with children. Finally, the book offers examples of local and international programmes that have been initiated to promote fatherhood and to work with fathers.

Buy *Baba: Men and Fatherhood in South Africa* from leading booksellers, or send an e-mail to [orders@blueweaver.co.za](mailto:orders@blueweaver.co.za), or visit [www.hsrcpress.ac.za](http://www.hsrcpress.ac.za).



## CORPORAL PUNISHMENT WORKSHOP AND ROUNDTABLES

These events will be hosted by RAPCAN and the South African Human Rights Commission in January 2006 in Cape Town. The tentative programme is as follows:

- **Tuesday, 24 January:** Hands-on workshop with Peter Newell from End Corporal Punishment Campaign for local NGOs working in the field of alternatives and positive discipline. Contact Carol Bower at [carol@rapcan.org.za](mailto:carol@rapcan.org.za) for further information.
- **Wednesday, 25 January:** Roundtable for Under 18s - being organised by SAHRC. Contact Judith Cohen at [jcohen@sahrc.org.za](mailto:jcohen@sahrc.org.za).
- **Thursday, 25 January:** Adult Roundtable bringing together decision-makers and activists to consider how to work towards the total prohibition of corporal punishment, led by Peter Newell. By invitation only.
- **Possible Master Class with Peter Newell** for activists in Southern Africa working on this issue. By invitation only.

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